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No. 85-608

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

THE STATE OF ILLINOIS,

Petitioner,

vs.

ALBERT KRULL, et al.,

Respondents.

On Writ Of Certiorari To The
Supreme Court Of Illinois

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

PAGE(S)

ARGUMENT:

THE EXCLUSIONARY RULE WAS IMPROPERLY INVOKED IN THE LOWER COURT WHERE THE PREDICATE SEARCH WAS AUTHORIZED BY A PRESUMPTIVELY VALID STATUTE ONLY LATER FOUND TO VIOLATE THE FOURTH AMENDMENT 1

A.

Application Of The Exclusionary Rule Is Unwarranted Where A Search Or Seizure Was Conducted In Reasonable Reliance On A Statute Subsequently Ruled Invalid Under The Fourth Amendment 1

B.

The Inspection Of Respondent Krull's Premises, Authorized By A Long-Standing State Statute Which Existing Law Did Not Clearly Establish To Be Invalid, Was Conducted In Good Faith 5

C.

Retroactive Application Of This Court's Rationale In *Leon* Is Compelled Where The Purpose Of The Rule Announced Therein Would Be Otherwise Defeated And Where No Justifiable Reliance On Prior Law Would Be Frustrated 11

CONCLUSION 15

TABLE OF AUTHORITIES

CASES:	PAGE(S)
Adkins v. State, 675 S.W.2d 604 (Tex. App. 8th Dist. 1984)	14
Bell v. Louisville & Nashville R.R., 106 Ill. 2d 135, 478 N.E.2d 384 (1985)	8
Bionic Auto Parts and Sales, Inc. v. Fahner, 518 F. Supp. 582 (N.D. Ill. 1981)	2, 6
Bionic Auto Parts and Sales, Inc. v. Fahner, 721 F.2d 1072 (7th Cir. 1983)	3
Commonwealth v. Gray, 503 A.2d 921 (Pa. 1985)	14
Commonwealth v. McCluskey, 395 Mass. 1003, 479 N.E.2d 672 (1985)	14
Desist v. United States, 394 U.S. 244 (1969)	11
Dunaway v. New York, 442 U.S. 200 (1979)	3
Illinois v. Gates, 462 U.S. 213 (1983)	14
I.N.S. v. Lopez-Mendoza, 468 U.S. 1032 (1984)	1, 3
Kolender v. Lawson, 461 U.S. 352 (1983)	3
Krull, et al. v. Fahner, et al., No. 81-C-4907 (N.D. Ill.)	3
Lincoln v. State, 285 Ark. 107, 685 S.W.2d 166 (1985)	14
Massachusetts v. Sheppard, ___ U.S. ___, 104 S.Ct. 3424 (1984)	10, 13
Massachusetts v. Upton, ___ U.S. ___, 104 S.Ct. 2085 (1984)	14

Michigan v. DeFillippo, 443 U.S. 31 (1979) 3, 4

Payton v. New York, 445 U.S. 573 (1980) 12

People v. Allen, 407 Ill. 596, 96 N.E.2d 446 (1950) .. 5

People v. Helmquist, 161 Cal. App. 3d 609, 207 Cal. Rptr. 718 (4th Dist. 1984) 13

People v. Krull, 107 Ill. 2d 107 (1985) 8, 10

People v. Macavoy, 162 Cal. App. 3d 746, 209 Cal. Rptr. 34 (1st Dist. 1984) 13, 14

People v. Tisler, 103 Ill. 2d 226, 469 N.E.2d 147 (1984) 14

Shea v. Louisiana, 470 U.S. 51 (1985) 11, 12, 13

State v. Bouchles, 457 A.2d 798 (Me. 1983) 14

State v. Brooks, 201 N.J. Super. 10, 492 A.2d 390 (1985) 13

State v. Schaffer, 107 Idaho 812, 693 P.2d 458 (1984) 14

Stone v. Powell, 428 U.S. 465 (1976) 2, 5

United States v. Barker, 623 F. Supp. 823 (D. Colo. 1985) 14

United States v. Biswell, 406 U.S. 311 (1972) . 6

United States v. Cassity, 604 F. Supp. 1566 (E.D. Mich. 1985) 13

United States v. Estrada, 733 F.2d 683 (9th Cir.), *cert. denied*, ____ U.S. ____, 105 S.Ct. 168 (1984) 14

United States v. Freire, 710 F.2d 1515 (11th Cir.), *cert. denied*, ____ U.S. ____, 104 S.Ct. 1277 (1984) 14

United States v. Hendricks, 743 F.2d 653 (9th Cir. 1984) 14

United States v. Janis, 428 U.S. 433 (1976) ... 4

United States v. Johns, ____ U.S. ____, 105 S.Ct. 881 (1985) 14

United States v. Johnson, 457 U.S. 537 (1982) 11, 12

United States v. Leon, 468 U.S. 897, 104 S.Ct. 3405 (1984) ..... *passim*

United States v. Maggitt, 778 F.2d 1029 (5th Cir. 1985) 9

United States v. Peltier, 422 U.S. 531 (1975) .. 11

United States v. Ross, 456 U.S. 796 (1982) 14

United States v. Sager, 743 F.2d 1261 (8th Cir. 1984), *cert. denied*, ____ U.S. ____, 105 S.Ct. 1196 (1985) 13

United States v. Segovia-Melgar, 595 F. Supp. 753 (D.D.C. 1984) 14

United States v. Thornton, 746 F.2d 39 (D.C. Cir. 1984) 14

STATUTE:

Ill. Rev. Stat., ch. 95½, § 5-401(e) (1979) 2, 5, 6, 7, 8, 9, 10

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ARGUMENT

THE EXCLUSIONARY RULE WAS IMPROPERLY INVOKED IN THE LOWER COURT WHERE THE PREDICATE SEARCH WAS AUTHORIZED BY A PRESUMPTIVELY VALID STATUTE ONLY LATER FOUND TO VIOLATE THE FOURTH AMENDMENT.

A.

Application Of The Exclusionary Rule Is Unwarranted Where A Search Or Seizure Was Conducted In Reasonable Reliance On A Statute Subsequently Ruled Invalid Under The Fourth Amendment.

In discussing petitioner's argument that the sanction of evidentiary exclusion is not appropriately directed at legislative bodies, respondents point out that the enactment of one unconstitutional statute may affect numerous individuals. (Brief for Respondents at 15-17) This concern was addressed by analogy in *I.N.S. v. Lopez-Mendoza*, 468 U.S. 1032, 104 S.Ct. 3479, 3488 (1984), where this Court noted that although searches conducted pursuant to INS regulations may be broad in scope, their highly repetitive character and the agency's consolidated status enhance the possibility of injunctive and declaratory relief, thereby undermining the deterrent value of the exclusionary rule. Due to the nature of statewide legislation and the legislative process, the existence of a particular statute is even less likely to remain unchallenged by persons potentially affected by its enactment.[1]

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[1] Respondents accuse petitioner of attempting to "prevent a citizen from effectively vindicating his constitutional rights by use of the suppression remedy" and of suggesting that any need to remedy fourth amendment violations is satisfied by the availability of injunctive and declaratory relief to financially capable businesses. (Brief for Respondents at 17, 18, 20) In *United States v. Leon*,

(Footnote continued on following page)

Respondents also emphasize the district court's finding in *Bionic Auto Parts and Sales, Inc. v. Fahner*, 518 F. Supp. 582 (N.D. Ill. 1981), that abuses had occurred during administrative inspections ostensibly conducted pursuant to Ill. Rev. Stat., ch. 95½, § 5-401(e) (1979). (Brief for Respondents at 15-17) However, even if it is assumed that some police misconduct can be demonstrated in the enforcement of a specific regulatory enactment, such a showing is largely irrelevant to the question of whether application of the exclusionary sanction is necessary to deter the legislative branch as well as law enforcement. Indeed, respondents themselves do not suggest that the Illinois legislature amended section 5-401(e) as a result of the exclusion of evidence in any prosecution. Rather, it expeditiously "followed the advice of the District Court and reenacted the statute to remedy the constitutional deficiencies set forth in the District Court opinion." (Brief for Respondents at 19) This recognition hardly squares with respondents' suggestion (see Brief for Respondents at 27, n. 12 and accompanying text) that without the threat of evidentiary exclusion, legislatures will not be concerned with the enactment of constitutional laws and the amendment of those found invalid by even a single federal judge.[2]

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[1] *continued*
468 U.S. 897, 104 S.Ct. 3405 (1984), this Court reiterated that the exclusionary rule "is neither intended nor able to 'cure the invasion of the defendant's rights which he has already suffered.' " 104 S.Ct. at 3412 [quoting *Stone v. Powell*, 428 U.S. 465, 540 (1976) (White, J., dissenting)]. Accordingly, petitioner did not note the availability of declaratory relief to certain citizens as an alternative personal "remedy" to application of the exclusionary sanction, but only as one practical means by which fourth amendment law may develop. (See Brief for Petitioner at 11, n. 3)

[2] Respondents credit petitioner with the arguments that the remedial purposes of the statute would be interfered with by application of the exclusionary rule and that no industry abuses have occurred during inspections conducted pursuant to section 5-401(e).

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Ultimately, respondents do not strongly urge that use of the exclusionary rule is essential or even likely to deter legislators. Rather, relying upon *Kolender v. Lawson*, 461 U.S. 352, 362, n. 1 (1983) (Brennan, J., concurring), *Michigan v. DeFillippo*, 443 U.S. 31 (1979), *United States v. Leon*, 468 U.S. 897, 104 S.Ct. 3405 (1984), and *Dunaway v. New York*, 442 U.S. 200 (1979), they argue that where the legislature has chosen to provide for warrantless

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[2] *continued*
(Brief for Respondents at 18, 28) While petitioner noted the importance of the remedial purpose sought to be protected by the regulatory scheme, petitioner did so only in explaining why Detective McNally's belief in the statute's validity was not clearly unreasonable. (Brief for Petitioner at 19)

Neither has petitioner found it necessary to quarrel with Judge Shadur's findings of abuse in *Bionic*, for his July 6 opinion could not have addressed the specific search at issue here. Respondents represent that their criminal prosecution and the *Bionic* case were "related" at the time of the district court's ruling because respondent Krull had filed a complaint for declaratory and injunctive relief on the previous day in *Krull, et al. v. Fahner, et al.*, No. 81-C-4907 (N.D. Ill.), which was consolidated with *Bionic*. (Brief for Respondents at 3, 4, n. 2) Because these facts nowhere appear in the record before this Court, petitioner's counsel inspected the docket sheet of that case, which reflects that respondent Krull's complaint was filed without issuance of summons on August 27, 1981, and that he moved for consolidation with *Bionic* one month later. To the extent that respondents otherwise deem it relevant that Judge Shadur found field officers to have exercised unbridled discretion under section 5-401(e), petitioner would note, as did the seventh circuit in *Bionic Auto Parts and Sales, Inc. v. Fahner*, 721 F.2d 1072, 1080, n. 3 (7th Cir. 1983), that a pattern of illegal conduct was never alleged there and the abuses in question occurred prior to amendment of the statute. Petitioner is cognizant of the suggestion by this Court in *Lopez-Mendoza*, 104 S.Ct. at 3490, and by Justice Blackmun in *Leon*, 104 S.Ct. at 3424 (Blackmun, J., concurring), that conclusions concerning the exclusionary rule's value in deterring police misconduct may be reassessed in accord with experience. However, there presently exists no significant reason for believing that officers conducting administrative searches under the Illinois Vehicle Code have acted or will potentially act so lawlessly as to justify the suppression of reliable evidence even where a particular search was conducted in objectively reasonable good faith.

searches not based upon probable cause, it must be held to "higher standards" because the use of tainted evidence is more likely to compromise "the integrity of the courts and the sanctity of the Constitution." (Brief for Respondents at 23-26)

Petitioner does not here find it necessary to dispute Justice Brennan's position in *Kolender* or in *DeFillippo*, 443 U.S. at 43 (Brennan, J., with whom Marshall, J., and Stevens, J., join, dissenting), that States may not authorize police conduct which trenches upon fourth amendment rights regardless of whether police act pursuant to a substantive or procedural statute. Nor does petitioner find it necessary to deny that the Illinois legislature in the present case failed in its duty to enact an administrative inspection scheme predictable in its application so as to provide an adequate substitute for a warrant. However, in view of this Court's clear approval of warrantless administrative searches conducted under a properly drawn statute, petitioner is unable to discern why the introduction of evidence despite an error committed by the legislative branch in drafting a statute compromises judicial integrity any more than the use of evidence despite judicial error in drafting a warrant. Arguably, the converse conclusion could be drawn. *See United States v. Janis*, 428 U.S. 433, 458, n. 35 (1976) ("[t]he primary meaning of 'judicial integrity' in the context of evidentiary rules is that the courts must not commit or encourage violations of the Constitution").

In any event, *Leon* did not, as respondents repeatedly state (Brief for Respondents at 8, 9, 13, 14, 23, 24, 29), reaffirm the use of the exclusionary rule in cases where authorities have acted in reasonable reliance on a procedural statute.[3] Rather, this court merely noted that "[t]he *substantive* Fourth Amendment principles announced in

[3] Neither are respondents accurate (Brief for Respondents at 9, 11) in characterizing *DeFillippo*'s dicta as the holding of the case.

those cases are fully consistent with our holding here." 104 S.Ct. at 3415, n. 8 (emphasis supplied). And most certainly *Leon* did not suggest that, in assessing the need to apply the exclusionary rule in the context of procedural statutes, the "focus" should be upon considerations of judicial integrity rather than the deterrent policy of the rule. (Brief for Respondents at 24) Indeed, *Leon* specifically recognized that while courts "must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the exclusion of highly probative evidence." 104 S.Ct. at 3420, n. 22 [quoting *Stone v. Powell*, 428 U.S. 465, 485 (1976)].

B.

The Inspection Of Respondent Krull's Premises, Authorized By A Long-Standing State Statute Which Existing Law Did Not Clearly Establish To Be Invalid, Was Conducted In Good Faith.

Respondents state that petitioner "attempts to argue that [section 5-401(e)] had withstood numerous prior constitutional assaults." (Brief for Respondents at 20) To the contrary, petitioner's opening brief noted that "before initiation of the present prosecution, the Illinois state courts had had only two occasions to address the reasonableness of searches directed at the premises of dealers licensed to buy and sell used motor vehicles or vehicle parts." (Brief for Petitioner at 17) Although petitioner does not find *People v. Allen*, 407 Ill. 596, 96 N.E.2d 446 (1950), to be squarely on point with the search here (see Brief for Respondents at 21), its rationale would certainly support a belief that the inspection of a licensee's premises is constitutionally permissible on a theory of implied consent.[4]

[4] Respondents attempt to make much of the trial judge's finding and the similar stipulation reproduced at J.A. 38, 39 that respon-

(Footnote continued on following page)

Also in support of their contention that section 5-401(e) did not enjoy a strong presumption of constitutionality, respondents point to the state of the law as set forth by this Court and to the fact that a complaint attacking the statute had been filed in *Bionic Auto Parts and Sales, Inc. v. Fahner*, 518 F.Supp. 582 (N.D. Ill. 1981), at the time of the July 5, 1981, search. (Brief for Respondents at 21, 22) Petitioner's opening brief has already outlined in detail why precedent of this Court did not clearly establish the statute to be invalid; absent other reasons for the authorities to believe the statute unconstitutional, the pendency of *Bionic* must be deemed immaterial, particularly where substantial caselaw to the contrary existed. (See Brief for Petitioner at 17-20) Despite respondents' suggestion (Brief for Respondents at 22, n. 10), petitioner does not take the position that authorities act in good faith whenever a search or seizure is made pursuant to a specific statute not yet declared unconstitutional. However, where no extant decisions of this Court or those of the local state or federal courts clearly establish similar legislation to violate the fourth amendment, the presumptive validity of the statute without question remains intact absent highly unusual circumstances not present here. (See also p. 11, n. 8, *infra*.)

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[4] *continued*
dent Lucas did not consent to the inspection at issue here. (Brief of Respondents at 10, 21, 31, 32) While petitioner does not find it necessary to dispute that Lucas merely acquiesced in the search "because he had no choice but to allow the officer to look around under duress of the Statute" (J.A. 20, 30), there has never been any suggestion that Lucas' consent was otherwise involuntary. *See United States v. Biswell*, 406 U.S. 311 (1972) (consent irrelevant where licensee submits to lawful authority exercised without use of unauthorized force). Having found the statute unconstitutional, the judge could not rely on a theory of implied consent to justify the search. Conversely, in emphasizing the implied consent provisions of the predecessor to section 5-401(e) and in upholding the search conducted there, the Illinois Supreme Court in *Allen* implicitly placed its imprimatur on the statute.

Respondents' Statement of the Case and supporting argument that the police officers here did not act in compliance with the Illinois Vehicle Code contain several serious factual misrepresentations. Contrary to their assertion (Brief for Respondents at 5, 31), the trial court initially found Detective McNally's inspection of respondent Krull's premises to have been authorized by section 5-401(e): "Now, this prosecution is commencing based on a search that was conducted under a Statute which allowed it at the time it was made. It was a permissible activity." (J.A. 20) Indeed, the sole contention advanced in respondent Krull's Motion to Suppress was that "[t]he instant search was invalid because the *statute authorizing the search* was found unconstitutional." (J.A. 16) (emphasis supplied) Also contrary to respondents' assertion (Brief for Respondents at 5), the trial court did not even intimate the statute to have been violated before the case reached the Appellate Court of Illinois. (See J.A. 18-29) Therefore, while petitioner certainly agrees that the appellate court "did not disturb the trial court's finding[ ]" as to whether "Officer McNally exceeded the scope of his authority in conducting the search" (Brief for Respondents at 6), the finding left intact directly contradicted that represented by respondents.[5]

Neither did the appellate court remand the case for a determination of whether the good faith exception should be applied in the present context. (See Brief for Respondents at 6) Rather, remand was for the purpose of (1) eliciting a factual determination on Officer McNally's good faith "so that we might evaluate the State's claim", and to provide the trial court with the opportunity to reconsider (2) the constitutionality of the statute and (3) re-

[5] Respondents, it should be noted, did not file a brief in the appellate court. (J.A. 23)

spondent Mucerino's standing. (J.A. 25, 26) (emphasis supplied) The trial judge did dispose of "two major considerations" of the appellate court on remand, reiterating his belief that section 5-401(e) is unconstitutional and that respondent Mucerino had standing to contest the search. (J.A. 32, 33) However, when specifically discussing the issue "we have to address directed by the Appellate Court as a result of the Gates' case", the judge stated only that the decision, involving a search pursuant to warrant, was inapplicable here. (J.A. 32, 34, 35) Although the initial comments made by the judge at the hearing could be read to reflect a concern that Officer McNally exceeded the scope of section 5-401(e) (see J.A. 29), it is not at all clear that he ever made an actual finding to that effect.

Finally, respondents' assertion that the Illinois Supreme Court held the search at issue to have been unauthorized by the statute is preposterous. Page 120 of the official reports, to which respondents cite (Brief for Respondents at 30, n. 13), addresses only whether valid consent to search was given by respondent Mucerino and whether the result reached below was correct. *People v. Krull*, 107 Ill.2d 107, 120 (1985). *See Bell v. Louisville & Nashville R.R.*, 106 Ill.2d 135, 148, 478 N.E.2d 384, 389 (1985) (appellate court's order to affirmance need not embrace reasoning of lower court). To the contrary, and as noted in petitioner's opening brief (Brief for Petitioner at 15, n. 5), it must be presumed that the Illinois Supreme Court found the officer's conduct to comport with section 5-401(e).[6]

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[6] Without citation to the record, respondents state that petitioner made no argument to the "appellate court" that the judge's purported finding of exceeded authority was manifestly erroneous. (Brief for Respondents at 31) As already explained, petitioner had no reason to advance the argument in the Appellate Court of Illi-

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Even if Detective McNally's search exceeded the scope of that authorized by the Motor Vehicle Code, he "searched only those places and for those objects that it was reasonable to believe were covered by the [statute]." *Leon*, 104 S.Ct. at 3419, n. 19.[7] McNally, as a peace officer, was specifically authorized by section 5-401(e) to inspect respondent Krull's records and sought to do so pursuant to his regular inspection duties. He entered the premises at a "reasonable time", at 10:30 a.m. when the Action Iron and Metal Company was open for business and respondent Lucas was on premises and in charge. Upon request, Lucas tendered to McNally a yellow pad of paper describing vehicles which he had purchased, but stated that he could not presently locate the company's police book. When "[e]very record required to be maintained under this Section" was not produced for McNally in accord with legislative mandate, he received permission from Lucas to inspect vehicles in the company's scrap yard. There, McNally inspected only inventory subject to the record-

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[6] *continued*
nois inasmuch as the trial court had found in petitioner's favor on the issue. And in the Illinois Supreme Court, petitioner repeatedly contended that the search of respondent Krull's premises satisfied the requirements of section 5-401(e). Even if the trial court made a contrary finding, it would have been primarily based upon a construction of the statute and was therefore subject to *de novo* review in the higher court. Indeed, in this Court petitioner does not dispute the historical facts found by the trial judge. *See generally United States v. Maggitt*, 778 F.2d 1029, 1034, 1035 (5th Cir. 1985).

[7] Respondents complain of a similar substitution of "statute" for "warrant" in petitioner's opening brief, stating that it constitutes an attempt to misquote *Leon*. (Brief for Respondents at 14, n. 5) Petitioner, however, is merely attempting to illustrate through *Leon*'s exact language the analogies that may be drawn for our present purposes. The use of brackets properly designates a substitution of words, and certainly all parties and this Court are aware that *Leon* involved searches pursuant to warrant.

keeping requirements. Subsequent to the date of the search, respondent Krull was located by authorities and his records transferred to McNally by Krull's attorney.

Despite McNally's otherwise strict adherence to the inspection procedures outlined by 5-401(e), the trial court appears to have been concerned that McNally's inspection of vehicles other than those designated on Lucas' pad was beyond the scope "of determining the accuracy of required records" under the statute. As noted in petitioner's opening brief (Brief for Petitioner at 15, n. 5), this construction of the statute is ill-conceived. Even if it were correct, however, it was certainly reasonable for Detective McNally to believe that the statute authorized the immediate inspection of premises to verify the accuracy of records to be later tendered. In fact, the trial judge, with whom the Illinois Supreme Court agreed, found that Lucas allowed Detective McNally to do what respondent himself "presumed the officer had a right to do at that time." (J.A. 20); *People v. Krull*, 107 Ill.2d 107, 120, 481 N.E.2d 703, 709 (1985).

In *Massachusetts v. Sheppard*, ____ U.S. ____, 104 S.Ct. 3424 (1984), this Court declined to speculate whether an officer with "unalleviated concerns" about the proper scope of a warrant would be required to notice a blatant variance between the objects of the search designated in the warrant and those identified in the supporting affidavit. *Id.* at 3429, n. 6. In the present case, nothing in the statute itself would have placed Officer McNally on notice that his conduct might not be authorized pursuant to its terms and there exists no other apparent reason for him to have held such a belief. As in *Sheppard*, "[a]n error of constitutional dimensions may have been committed with respect to the [enactment of section 5-401(e)], but it was the [legislature], not the police officer, who made the critical mistake." *Id.* at 3429.

C.

Retroactive Application Of This Court's Rationale In *Leon* Is Compelled Where The Purpose Of The Rule Announced Therein Would Be Otherwise Defeated And Where No Justifiable Reliance On Prior Law Would Be Frustrated.

Citing this Court's decisions in *United States v. Johnson*, 457 U.S. 537 (1982), and *Shea v. Louisiana*, 470 U.S. 51, 105 S.Ct. 1065 (1985), respondents argue that the good faith analysis of *Leon* cannot be applied retroactively because *Leon* represents a "clear break" from past precedent.[8] While petitioner does not dispute that *Leon* was

[8] Respondents credit petitioner with presenting a "confused" analysis as to whether this Court's decision in *Leon* should be applied retroactively. (Brief for Respondents at 4, n. 3, 33) However, petitioner's opening brief assumed *Leon*'s rationale to potentially impact this case inasmuch as respondents never argued to the contrary in the courts below. While petitioner did footnote the *Johnson* opinion after citation to *United States v. Peltier*, 422 U.S. 531 (1975), it was merely in recognition of the fact that unlike in *Peltier*, this Court in *Johnson* placed little weight on the policies underlying the exclusionary rule in determining whether fourth amendment law should be applied retroactively. Rather, in "rethinking" the general law of retroactivity and in the absence of clear retroactivity precedent, this Court placed primary emphasis on those concerns expressed by Justice Harlan in *Desist v. United States*, 394 U.S. 244, 256 (1969) (Harlan, J., dissenting). Independent of those concerns, which are relevant to the litigation of any criminal case, the policies underlying the exclusionary rule have without question been determinative when its application as a remedy is at issue.

To the extent that respondents suggest petitioner's position on the merits to be in conflict with *Johnson*'s partial adoption of Justice Harlan's reasoning, petitioner would note that *Leon* rests upon the premise that even where a warrant has been invalidated in a particular defendant's case before trial, he has no right to invoke the exclusionary rule absent objective bad faith. Moreover, *Johnson*'s specific fourth amendment concern that law enforcement officers not be allowed to knowingly engage in dubious constitutional practices pending this Court's resolution of the issue, 457 U.S. at 561, may be addressed in assessing their good faith. Indeed, because the California Supreme Court, along with various

(Footnote continued on following page)

the first case in which a majority of this Court recognized a form of good faith to preclude invocation of the exclusionary rule, analysis of the *Johnson* and *Shea* opinions themselves reveals respondents' reliance on those cases to be severely misplaced. Moreover, virtually every state and federal court finding the issue worthy of discussion has rejected respondents' position.

Johnson and *Shea* both addressed the retroactivity of judicial pronouncements expanding a defendant's constitutional rights. *Johnson* did observe that unanticipated rulings are invariably applied prospectively, but emphasized that regardless of the purposes underlying a particular constitutional rule at issue, such result was "virtually compelled" by law enforcement's reliance on the prior law and by the disruptive effect retroactive application would have on the administration of justice. 457 U.S. at 549. And while this Court in *Shea* remained faithful to *Johnson*'s generic approach to retroactivity questions presented by non-final convictions, it did note retroactive application to be more compelling where the constitutional ruling at issue relates to the integrity of the fact-finding process. 105 S.Ct. at 1070. *See also Johnson*, 457 U.S. at 562, n. 21.

In contrast to decisional law addressed in *Johnson* and *Shea*, the *Leon* opinion restricted a defendant's right to invoke the exclusionary sanction. Therefore, retroactive application of the principles announced therein could have no adverse impact on the administration of justice or betray official reliance on prior precedent. In accord with both

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[8] *continued*
state and federal courts, had held in accord with *Payton v. New York*, 445 U.S. 573 (1980), long before defendant Johnson's arrest, 457 U.S. at 553, n. 15, the same result may have been reached had a good faith analysis been employed.

cases, the purpose of the rule announced in *Leon* argues for retroactive application inasmuch as the decision sought to enhance the fact-finding process by requiring use of the exclusionary sanction only where necessary to substantially further fourth amendment interests. Nor would the purpose of the exclusionary rule itself be undermined by applying the good faith exception retroactively; it would be unreasonable to believe that a peace officer will violate prevailing constitutional norms in the expectation that the rules will be later changed by this Court so as to authorize his conduct. Particularly in view of *Leon*'s rationale, it would be even more incredible to suggest that prospective application of the principles announced there will deter future actions taken in objective good faith.

Respondents answer the above considerations with the complaint that application of the good faith exception would be inequitable because *Leon* leaves unaffected those cases where the government chose not to appeal a suppression order. (Brief for Respondents at 35) This, however, is but a consequence of the established principle of waiver which may independently foreclose a party's right to rely on new law. *See Shea*, 105 S.Ct. at 1070, n. 4. Moreover, respondents' assertion that only they will be required to relitigate their claims in light of *Leon* (Brief for Respondents at 35) is certainly inaccurate; neither defendant Leon nor the defendant in *Massachusetts v. Sheppard*, ____ U.S. ____, 104 S.Ct. 3424 (1984), was allowed to invoke the exclusionary rule as a matter of constitutional law. And numerous courts have already applied

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[9] *See, e.g., United States v. Sager*, 743 F.2d 1261 (8th Cir. 1984), *cert. denied*, ____ U.S. ____, 105 S.Ct. 1196 (1985); *United States v. Cassity*, 604 F.Supp. 1566 (E.D Mich. 1985); *State v. Brooks*, 201 N.J. Super. 10, 492 A.2d 390 (1985); *People v. Helmquist*, 161 Cal. App. 3d 609, 207 Cal. Rptr. 718 (4th Dist. 1984); *People*

(Footnote continued on following page)

Leon retroactively.[9] *Cf. United States v. Ross*, 456 U.S. 796, 824, n. 33 (1982) ("Any interest in maintaining the status quo that might be asserted by persons who may have structured their business of distributing narcotics or other illicit substances on the basis of judicial precedents clearly would not be legitimate."); *United States v. Johns*, ___ U.S. ___, 105 S.Ct. 881 (1985) (applying *Ross* retroactively without discussion); *Massachusetts v. Upton*, ___ U.S. ___, 104 S.Ct. 2085 (1984) (per curiam) [applying *Illinois v. Gates*, 462 U.S. 213 (1983), retroactively without discussion].

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[9] *continued*
v. Macavoy, 162 Cal. App. 3d 746, 209 Cal. Rptr. 34 (1st Dist. 1984); *Lincoln v. State*, 285 Ark. 107, 685 S.W.2d 166 (1985); *State v. Schaffer*, 107 Idaho 812, 693 P.2d 458 (1984); *United States v. Barker*, 623 F.Supp. 823 (D. Colo. 1985); *United States v. Hendricks*, 743 F.2d 653 (9th Cir. 1984); *United States v. Thornton*, 746 F.2d 39 (D.C. Cir. 1984); *United States v. Segovia-Melgar*, 595 F. Supp. 753 (D.D.C. 1984); *Adkins v. State*, 675 S.W.2d 604 (Tex. App. 8th Dist. 1984). See also the following cases holding that decisions limiting application of the exclusionary rule are fully retroactive: *United States v. Estrada*, 733 F.2d 683 (9th Cir.), *cert. denied*, ___ U.S. ___, 105 S.Ct. 168, 194 (1984); *United States v. Freire*, 710 F.2d 1515 (11th Cir.), *cert. denied*, ___ U.S. ___, 104 S.Ct. 1277 (1984); *Commonwealth v. McCluskey*, 395 Mass. 1003, 479 N.E.2d 672 (1985); *Commonwealth v. Gray*, 503 A.2d 921 (Pa. 1985); *People v. Tisler*, 103 Ill.2d 226, 469 N.E.2d 147 (1984); *State v. Bouchles*, 457 A.2d 798 (Me. 1983).

CONCLUSION

For the foregoing reasons, and those set forth in their opening brief, the People of the State of Illinois respectfully request that the decision of the Illinois Supreme Court suppressing evidence be reversed.

Respectfully submitted,

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